

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRADFORD H. BERNSTEIN and MIRA
BERNSTEIN,

Plaintiffs,

**Docket No.: 07-CV-2991
(BSJ)(GWG)**

-against-

ANSWER

FAIRMONT HOTELS & RESORTS (U.S.) INC.,

Defendant.
-----X

Defendant FAIRMONT HOTELS & RESORTS (U.S.) INC. ("FAIRMONT"), by its attorneys, STRONGIN ROTHMAN & ABRAMS, LLP, answering the Verified Complaint of the Plaintiffs, states as follows:

ANSWERING THE FIRST CAUSE OF ACTION

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Verified Complaint.
2. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2" of the Verified Complaint.
3. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the Verified Complaint.
4. Denies each and every allegation contained in paragraph "4" of the Verified Complaint.
5. Admits each and every allegation contained in paragraph "5" of the Verified Complaint.
6. Denies each and every allegation contained in paragraph "6" of the Verified Complaint.

7. Denies each and every allegation contained in paragraph "7" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

8. Denies each and every allegation contained in paragraph "8" of the Complaint but begs leave to refer all questions of law to the court at the trial of this action.

9. Denies each and every allegation contained in paragraph "9" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

10. Denies each and every allegation contained in paragraph "10" of the Verified Complaint.

11. Denies each and every allegation contained in paragraph "11" of the Verified Complaint.

12. Denies each and every allegation contained in paragraph "12" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

13. Denies each and every allegation contained in paragraph "13" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

14. Denies each and every allegation contained in paragraph "14" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

15. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15" of the Verified Complaint.

16. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the Verified Complaint.

17. Denies each and every allegation contained in paragraph "17" of the Verified Complaint.

18. Denies each and every allegation contained in paragraph "18" of the Verified Complaint.

19. Denies each and every allegation contained in paragraph "19" of the Verified Complaint.

20. Denies each and every allegation contained in paragraph "20" of the Verified Complaint.

21. Denies each and every allegation contained in paragraph "21" of the Verified Complaint.

22. Denies each and every allegation contained in paragraph "22" of the Verified Complaint.

23. Denies each and every allegation contained in paragraph "23" of the Verified Complaint but begs leave to refer all questions of law to the court at the trial of this action.

24. Denies each and every allegation contained in paragraph "24" of the Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

25.Repeats, reiterates and realleges each and every response hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph "25" of the Verified Complaint.

26.Denies each and every allegation contained in paragraph "26" of the Verified Complaint.

27.Denies each and every allegation contained in paragraph "27" of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

28.That any injuries and/or damages sustained by the plaintiff, as alleged in the Verified Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of said plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of this answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

29.That by entering into the activity in which the plaintiff was engaged at the time of the occurrence set forth in the Verified Complaint, said plaintiff knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by plaintiff in her activities and such risks were assumed and accepted by her in performing and engaging in such activities.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

30.The liability of this defendant, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative

culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

31. In the event plaintiff recovers a verdict or judgment against this defendant, then said verdict or judgment must be reduced by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part, for any past or future claimed economic loss, from any collateral source programs.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

32. The Verified Complaint of plaintiff should be dismissed on the grounds that this jurisdiction is an improper jurisdiction under the doctrine of forum non-conveniens.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

33. Defendant hereby incorporates and asserts all applicable defenses existing under the federal laws of Mexico and/or the State of Quintana Roo or any state(s) and/or under doctrines and principles of international law, which the court determines are applicable to the instant litigation pursuant to any choice of law decision made in the future.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

34. Any injuries and damages, suffered by plaintiff was caused and/or contributed to by virtue of the contributory negligence of the plaintiff, and therefore, one or more of the causes of action are barred under the federal laws of Mexico and/or the State of Quintana Roo.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

35. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom this answering defendant did not exercise supervision or control and was not obligated to exercise supervision or control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE


36. The Verified Complaint fails to state facts sufficient to establish a cause of action against this answering defendant.

WHEREFORE, this answering defendant demands judgment dismissing the Verified Complaint against it, together with counsel fees, interest, costs of suit and such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 19, 2007

Yours, etc.

STRONGIN ROTHMAN & ABRAMS, LLP



DAVID ABRAMS (DA-4758)
Attorneys for Defendant
FAIRMONT HOTELS & RESORTS (U.S.)
INC.
50 Broadway, Suite 2003
New York, NY 10004
(212) 931-8300

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

SVETLANA LITVINKO, being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years, and resides in Richmond County, New York. That on this 19th day of April, 2007 she served the within **ANSWER** upon:

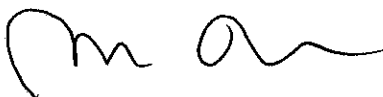
SPAR & BERNSTEIN, P.C.
225 Broadway, Suite 512
New York, NY 10007
(212) 227-8933
Attorney for Plaintiffs

by depositing a true copy of same securely enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, by Regular Mail.



SVETLANA LITVINKO

Sworn to before me this
19th day of April, 2007



NOTARY PUBLIC

MARTIN M. ADLER
Notary Public, State of New York
No. 02AD6074310
Qualified in King County
Commission Expires 5/13/ 2010